



UNITED STATES MARINE CORPS

3D MARINE DIVISION, FMF
III MARINE EXPEDITIONARY FORCE
UNIT 35801
FPO AP 96382-5801

IN REPLY REFER TO

5720

FOIA

28 Sep 20

Capt Mead
2043 Barnett Ave
Quantico, VA 22134

Dear Capt Mead:

I am submitting this letter to you as an additional response to your Freedom of Information Act (FOIA) request seeking the “redacted investigation report for a PAC complaint...on or around [sic] 16 Jun 20.”

Our review revealed that some information in the responsive documents are exempt from disclosure based on the following statutes:

1. 5 U.S.C. § 552(b)(3) allows for the withholding of records that are exempted from disclosure by another statute. 10 U.S.C. § 130b authorizes the withholding of names, ranks, duty addresses, official titles, and pay information of Department of Defense (DoD) personnel in overseas, sensitive, or routinely deployable units.
2. 5 U.S.C. § 552(b)(5) allows for the withholding of information that would be considered privileged in civil litigation.
3. 5 U.S.C. § 552(b)(6) allows for the withholding of information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Accordingly, we must partially deny your request and redact (withhold) this information pursuant to FOIA provisions 5 U.S.C. § 552(b)(3)(B), (b)(5), and (b)(6). All releasable information is provided to you at enclosure (1).

As the official partially denying your request, I am also advising that you have the right to appeal this determination to:

Judge Advocate General (Code 14)
1322 Patterson Avenue SE, Suite 3000
Washington Navy Yard, DC 20374-5066

You must postmark or submit an appeal, if any, within 90 calendar days from the date of this letter and should include a copy of your initial request, this letter, and a statement indicating why you believe Code 14 should grant your appeal. I recommend that your appeal and its envelope both bear the notation, “Freedom of Information Act Appeal”.

You also have the right to seek assistance and/or dispute resolution services from the Marine Corps FOIA Public Liaison, Ms. Sally Hughes, at hqmcfoia@usmc.mil or (703) 614-4008, and/or the Department of the Navy FOIA Public Liaison, Mr. Christopher Julka, at christopher.a.julka@navy.mil or (703) 697-0031. You may also contact the Office of Government Information Services (OGIS) for assistance and/or dispute resolution at ogis@nara.gov or 1-877-684-6448. For more information online about services provided by OGIS, please visit their website at <https://ogis.archives.gov>. There are no search fees associated with this request and no duplication fees.

Should you have any questions or concerns regarding this action, please do not hesitate to contact the Staff Judge Advocate, 3rd Marine Division, directly at DSN 315-622-9039, or via email to cindie.blair@usmc.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindi Blair", with a stylized flourish at the end.

C. BLAIR
Lieutenant Colonel, U.S. Marine Corps
Staff Judge Advocate
3d Marine Division

Enclosure: 1. Documents



UNITED STATES MARINE CORPS
3D MARINE DIVISION
UNIT 35801
FPO AP 96602-5801

IN REPLY REFER TO:

5830

IO

27 Jul 20

From: (b) (3) (B), (b) (6) USMC
To: (b) (3) (B), Headquarters Battalion

Subj: COMMAND INVESTIGATION INTO ALLEGATION OF
UNLAWFUL DISCRIMINATION – DASH NUMBER 0020200000392

Ref: (a) JAGINST 5800.7F CH 3, Manual of the Judge Advocate General (JAG), 30 Mar 20
(b) MCO 5354.1E, Marine Corps Prohibited Activities and Conduct (PAC), 26 Mar 18
(c) MCO P1610.17A, Performance Evaluation System (PES) CH 1, Para. 3. c., 1 May 18

Encl: (1) CI Appointing Letter and Extension dtd 16 Jun 20
(2) Audio Recordings of Witness Interviews (CD)
(3) Article 31b, Military Suspect's Acknowledgement and Waiver of Rights dtd 9 Jul 20
(4) Complaint Statement of (b) (3) (B), dtd 6 Jun 20
(5) Summary of Interview of (b) (3) (B), dtd 28 Jun 20
(6) Summary of Interview of (b) (3) (B), dtd 12 Jul 20
(7) Summary of Interview of (b) (3) (B), dtd 2 Jul 20
(8) Summary of Interview of (b) (3) (B), dtd 2 Jul 20
(9) Summary of Interview of (b) (3) (B), (b) (6) dtd 9 Jul 20
(10) Summary of Interview of (b) (3) (B), (b) (6) dtd 3 Jul 20
(11) Summary of Interview of (b) (3) (B), (b) (6) dtd 8 Jul 20
(12) Summary of Interview of (b) (3) (B), (b) (6) dtd 9 Jul 20
(13) Summary of Interview of (b) (3) (B), (b) (6) dtd 3 Jul 20
(14) Summary of Interview of (b) (3) (B), dtd 8 Jul 20
(15) (b) (3) (B), Officer PT Outlook Invite dtd 19 Jul 19
(16) (b) (3) (B), Outlook Counseling Invites (initial/90 day/FITREP)
(17) Initial/90 Day Interview Biographies (5)
(18) (b) (3) (B), letter to (b) (3) (B), dtd 12 Sep 19
(19) Draft Written Counseling dtd 16 Sep 19
(20) (b) (3) (B), E-mail 5/6 dtd 12 Jul 20
(21) (b) (3) (B), slides dtd 5 Nov 19 to 17 Dec 19 (3)
(22) (b) (3) (B), E-mail dtd 15 Jul 20
(23) (b) (3) (B), E-mail IRT (b) (3) (B), (b) (6) FITREP dtd 23 Oct 19
(24) (b) (3) (B), (b) (6) FITREP dtd 12 Jun 19 and 12 Sep 19
(25) (b) (3) (B), E-mail 2/4 dtd 10 Jul 20
(26) (b) (3) (B), t RS Profile dtd 10 Jul 20
(27) (b) (3) (B), MBS dtd 17 Jun 20
(28) (b) (3) (B), (b) (6) Text Msg Screenshots dtd Nov/Jan/Jun
(29) Written Counseling dtd 16 Dec 19
(30) Written Counseling dtd 21 Jan 20
(31) (b) (3) (B), E-mail 4/5 dtd 10 Jul 20
(32) (b) (3) (B), FITREP dtd 31 May 20
(33) (b) (3) (B), Awards Guidance dtd 2 Dec 19

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- (34) (b) (3) (B), E-mail 3/4 dtd 10 Jul 20
- (35) (b) (3) (B), FITREP dtd 1 Jul 14
- (36) (b) (3) (B), (b) FITREP dtd 6 Apr 19
- (37) (b) (3) (B), E-mail 6/6 dtd 12 Jul 20

Preliminary Statement

1. As directed by enclosure (1) and in accordance with reference (a), I conducted a command investigation (CI) into the facts and circumstances surrounding (b) (3) (B), (b) (6) prohibited activities and conduct allegations against (b) (3) (B), (b) (6) which included the following:

a. (b) (3) (B), alleged that (b) (3) (B), unlawfully discriminated against her because of her gender. Between July 2019 and July 2020, (b) (3) (B), wrote two (2) fitness reports on (b) (3) (B): a TD fitness report dated 27 October 2019, and an AN fitness report, dated 31 May 2020. On these fitness reports, (b) (3) (B), ranked (b) (3) (B), as his lowest ranked (b) (3) (B) and his third-lowest ranked (b) (3) (B), respectively. (b) (3) (B), alleged that (b) (3) (B), ranked her low because of her gender.

b. (b) (3) (B), alleged that (b) (3) (B), retaliated against her on 21 January 2020 because she made protected communications. Following her TD fitness report, dated 27 October 2019, (b) (3) (B), identified “adverse comments” in (b) (3) (B), written comments. (b) (3) (B), submitted her concern to MMRP who concurred that “[c]ompletes most assigned tasks with supervision” constituted an adverse comment. On 19 December 2019, (b) (3) (B), (b) (6) directed (b) (3) (B), to correct his comments in (b) (3) (B), (b) (6) fitness report. On 14 January 2020, (b) (3) (B), changed his comment in (b) (3) (B), (b) (6) fitness report to “[h]as all the tools necessary to be a successful Marine Officer.” On 21 January 2020, (b) (3) (B), gave (b) (3) (B), a written counseling for submitting late CSP requests and not adhering to previous written guidance on 16 December 2019. (b) (3) (B), alleged that (b) (3) (B), gave her this written counseling because she had informed MMRP about (b) (3) (B), inappropriate comment in her fitness report.

c. (b) (3) (B), alleged that (b) (3) (B), unlawfully discriminated because of her gender and retaliated against her in June 2020 because she made protected communications. Following her AN fitness report, dated 31 May 2020, (b) (3) (B), again identified “adverse comments” in (b) (3) (B), written comments. On 2 June 2020, (b) (3) (B), submitted her concern to (b) (3) (B), who directed (b) (3) (B), to delete the words “routine” and “basic” from his written comments. On 5 June 2020, (b) (3) (B), declined to submit an end of tour award for (b) (3) (B), (b) (3) (B), alleged that (b) (3) (B), did not submit an end of tour award for her because she informed (b) (3) (B), about (b) (3) (B), inappropriate comments in her fitness report; (b) (3) (B), also alleged that (b) (3) (B), did not submit her for an award because of her gender.

2. In the course of this investigation, I consulted with the (b) (3) (B), (b) (6)

Definitions of Unlawful Discrimination and Retaliation

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1. Unlawful Discrimination. Section 0108 of reference (b) provides that unlawful discrimination constitutes “[a]ny conduct whereby a Service member or DOD employee knowingly and wrongfully and without proper authority but with a nexus to military service treats another Service member or DOD employee adversely or differently based on race, color, national origin, religion, sex (including gender identity), or sexual orientation. Unlawful discrimination includes actions or efforts that detract from equal opportunity, with respect to the terms, conditions, or privileges of military service including, but not limited to, acquiring, assigning, promoting, disciplining, scheduling, training, compensating, discharging, or separating.” This does not include “conduct that discriminates on the basis of characteristics (including, but not limited to, age, height, and weight) that serve a proper military or other governmental purpose as set forth in other military policies.” The glossary provides that “sex discrimination” “[i]nvolves treating someone unfavorably because of that person’s sex.”

2. Retaliation. Paragraph 010404 of reference (b) provides that retaliation constitutes “[a]ny conduct whereby a Service member or DOD employee intentionally and without proper authority but with a nexus to military service takes or threatens to take any unfavorable action or withholds or threatens to withhold a favorable action against an individual because that individual: made or was preparing to make or was perceived as making or preparing to make a protected communication; reported or was planning to report a criminal offense; engaged or was preparing to engage in activity in furtherance of EEO or MEO laws and regulations; or, opposed direction to engage in an action that violates law, rule, or regulation or this Order. Retaliation is a category of prohibited behavior that involves animus and results in action being taken against an individual because of that individual’s otherwise protected communication or activity or for the intent to discourage any person from engaging in otherwise protected communication or activity.” Per the glossary of reference (b), a protected communication is a “lawful communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of... a violation of law or regulation.”

Investigative Steps

1. During this investigation, I interviewed ten (10) service members from the Material Readiness Branch (MRB) of the 3d Marine Division (3D MARDIV) G4. I recorded each interview except one (b) (3) (B), (b) (6). An audio recording of those interviews is provided at enclosure (2).

2. On 9 July 2020 at 1400, I met with (b) (3) (B), (b) (6) to interview him regarding the alleged discrimination. I provided (b) (3) (B), (b) (6) his Article 31b, Military Suspect’s Acknowledgement and Waiver of Rights, enclosure (3). Following this advisement, (b) (3) (B), (b) (6) waived his rights and spoke with me regarding the incidents. Following our interview, (b) (3) (B), (b) (6) provided additional information through e-mail and text.

Findings of Fact

1. Background/Turnover of MRB

a. In July 2017, (b) (3) (B), (b) (6) checked in as the 3D MARDIV Supply Officer that works in the Material Readiness Branch (MRB) within the G4. (b) (3) (B), (b) (6) served as (b) (3) (B), (b) (6) MRB OIC and (b) (3) (B), (b) (6) served as the DIV G4 from July 2017 – July 2018. (b) (3) (B), (b) (6) served as (b) (3) (B), (b) (6)

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(b) (3) (B), (b) (6) MRB OIC and (b) (3) (B), (b) (6) served as the DIV G4 from July 2018 – July 2019. (b) (3) (B), (b) (6) served as (b) (3) (B), (b) (6) MRB OIC and (b) (3) (B), (b) (6) served as the DIV G4 from July 2019 – July 2020. [Encls (2), (4), (5), (6), (17), (26), (27)]

b. In July 2018, (b) (3) (B), (b) (6) checked in as the 3D MARDIV Maintenance Management Officer (MMO) that works within the MRB within the G4. [Encls (2), (7), (17)]

c. In July 2018, (b) (3) (B), (b) (6) checked in as the 3D MARDIV Ordnance Officer that works within the MRB within the G4. [Encls (2), (8), (17)]

d. In August 2018, (b) (3) (B), (b) (6) checked in as the 3D MARDIV Assistant Ordnance Officer that works within the MRB in the G4. [Encls (2), (9)]

e. In February 2019, (b) (3) (B), (b) (6) checked in as the 3D MARDIV Ground Ordnance Chief that works within the MRB within the G4. [Encls (2), (10)]

f. In May 2019, (b) (3) (B), (b) (6) checked in as the 3D MARDIV Motor Transport (MT) Maintenance Officer that works within the MRB in the G4. [Encls (2), (11)]

g. In May 2019, (b) (3) (B), (b) (6) checked in as the 3D MARDIV MT Chief that works within the Materiel Readiness Branch (MRB) within the G4. [Encls (2), (12)]

h. In June 2019, (b) (3) (B), (b) (6) checked in as the 3D MARDIV Supply and MRB Chief that works in the MRB within the G4. [Encls (2), (13), (17)]

i. In June 2019, (b) (3) (B), (b) (6) checked in as the 3D MARDIV Logistics Readiness Inspection (LRI) OIC that works within the MRB within the G4. [Encls (2), (14), (17)]

j. In July 2019, (b) (3) (B), (b) (6) (male) checked in as the 3D MARDIV MRB Officer in Charge (OIC) within the G4. During (b) (3) (B), (b) (6) check-in process, (b) (3) (B), (b) (6) informed (b) (3) (B), (b) (6) that HQBN conducted Officer Physical Training (PT) on the third Friday of every month and stressed to (b) (3) (B), (b) (6) how important officer PT was to the battalion. [Encls (2), (6), (15)]

k. Following his discussion with (b) (3) (B), (b) (6), (b) (3) (B), (b) (6) sent Outlook calendar invites to the MRB Officers as a reminder that HQBN Officer PT takes place every third Friday of the month, from 19 July 2019 to 19 June 2020. [Encls (2), (6), (15)]

1. (b) (3) (B), (b) (6) conducted turnover with (b) (3) (B), (b) (6) in July 2019. (b) (3) (B), (b) (6) did not provide (b) (3) (B), (b) (6) with a letter of continuity for any Marine within the MRB, including (b) (3) (B), (b) (6). [Encls (2), (6)]

m. From July 2019 until July 2020, two (b) (3) (B), (b) (6) (only one female) worked in the MRB: (b) (3) (B), (b) (6) (female) and (b) (3) (B), (b) (6) (male). (b) (3) (B), (b) (6) was the only female in the MRB. [Encls (2), (4), (5), (6)]

2. (b) (3) (B), (b) (6) Initial Counselings

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a. (b) (3) (B), policy was to provide his staff with an initial counseling, a 90-day assessment, and a fitness report counseling. To schedule these counselings, (b) (3) (B), invited his staff member by sending an Outlook calendar invite. During these counselings, (b) (3) (B), would bring a copy of his staff member's biography that included his handwritten notes. He wrote notes directly on the biography in black ink during his initial counseling and in red ink during his 90-day assessment counseling. [Encls (2), (6), (7), (8), (9), (10), (11), (12), (13), (14), (16), (17)]

b. During my interview with (b) (3) (B), and in her complaint statement, she asserted that (b) (3) (B), did not provide her with an initial counseling or a 90-day assessment. (b) (3) (B), implied that (b) (3) (B), did provide these counselings to his male Marines, which constituted evidence of unlawful gender discrimination. [Encls (2), (4), (5)]

c. During my interview with (b) (3) (B), I informed him that (b) (3) (B), had asserted that he had not provided her with an initial counseling. He emphatically responded, "That's bullshit man!" (b) (3) (B), then provided me with a copy of the Outlook calendar invites for his initial counselings that documented that he had sent a calendar invite to (b) (3) (B), for her initial counseling for 0800 on 8 August 2019 and 90-day assessment at 1430 on 18 September 2019. (b) (3) (B), then provided me a hard copy of (b) (3) (B), (b) biography that included his notes in both black and red ink, indicating that he conducted both an initial counseling and a 90-day assessment counseling with (b) (3) (B),. Based upon (b) (3) (B), statement and the documentary evidence provided, I determined that (b) (3) (B), provided (b) (3) (B), an initial counseling and a 90-day assessment. [Encls (2), (4), (5), (6), (16), (17)]

3. August 2019 Verbal Counseling. In August 2019, (b) (3) (B), provided an LRI brief to (b) (3) (B),. During (b) (3) (B), brief, (b) (3) (B), made faces. After the brief, (b) (3) (B), told (b) (3) (B), that (b) (3) (B), is not a good supply officer. (b) (3) (B), felt taken aback by her comment. (b) (3) (B), then sat (b) (3) (B), down and talked to her about helping each other out and that we are all in this together. This was (b) (3) (B), first counseling with (b) (3) (B),. [Encls (2), (6)]

4. September 2019 Verbal Counseling

a. On 12 September 2019, (b) (3) (B), received a hand written counseling from (b) (3) (B), addressing late Consolidated Storage Program (CSP) submissions and that this is not a good trend. CPI on the note stands for continuous process improvement. This stressed how important the CSP requests were to the G4 and MRB. [Encls (2), (6), (18)]

b. In early September 2019, (b) (3) (B), directed (b) (3) (B), to attend a hearing protection fielding conference in the early morning at approximately 0500 JST. (b) (3) (B), informed (b) (3) (B), that she would attend. The next morning, (b) (3) (B), missed the conference because she overslept. [Encls (2), (6), (19)]

c. Because (b) (3) (B), slept through the conference, on 16 September 2019 (b) (3) (B), drafted a written counseling for (b) (3) (B), (draft provided as (b) (3) (B), (b) (5) Ultimately, (b) (3) (B), decided not to give (b) (3) (B), a written counseling and instead gave her only a verbal counseling based on a discussion with (b) (3) (B), (b) (6) about (b) (3) (B), being stressed out about work. [Encls (2), (6), (13), (19)]

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d. The 16 September 2019 counseling mentions excess and obsolete equipment actions that were not taken, physical courage and CSP requests. [Encls (2), (6), (19)]

5. Winter 2019 EWS and TOECRS

a. In September 2019, (b) (3) (B), requested that (b) (3) (B), allow her to attend EWS from 27 October 2019 until 12 December 2019. [Encls (2), (4), (5), (6)]

b. (b) (3) (B), did not want to lose a member of his staff, especially after his conversation with (b) (3) (B), where the G4 explained that Marines in Okinawa are the tip of the spear and Marines “do not come to Okinawa to go to school.” (b) (3) (B), indicated his desire not to lose a staff member for nearly two months since (b) (3) (B), as the Supply Section was also dealing with (b) (3) (B), (b) (6) administrative separation process and (b) (3) (B), was behind on MRB taskings. [Encls (2), (6)]

c. On 4 October 2019, (b) (3) (B), tasked (b) (3) (B), to complete 25 Tables of Organization and Equipment Change Requests (TOECRS) prior to 11 October and before her EWS-departure at the end of October. (b) (3) (B), had not worked the TOECRS since February 2019. [Encls (2), (6), (20)]

d. On 20 October 2019, (b) (3) (B), met with his MRB staff to discuss updates to his TOECRS tasking internal to the MRB. (b) (3) (B), attended the 20 October 2019 meeting unprepared and had not looked up any of her data prior to the meeting. When asked for her update, (b) (3) (B), stated that she could not complete the task because the Total Force Structure Management System (TFSMS) was down. All other staff members that attended were able to provide (b) (3) (B), with their TOECR updates. [Encls (2), (6), (20)]

e. Following the meeting, (b) (3) (B), intended to provide (b) (3) (B), with another written counseling. However, (b) (3) (B), (b) (6) told (b) (3) (B), that (b) (3) (B), was stressed out by the TOECRS tasking. (b) (3) (B), ultimately decided to provide (b) (3) (B), with a verbal counseling, and documented the incident via e-mail with (b) (3) (B),. [Encls (2), (6), (13), (20)]

f. On 27 October 2019, (b) (3) (B), departed for EWS and left with twenty-five (25) outstanding TOECRS. [Encls (2), (4), (5), (6)]

g. From 5 November 2019 to 17 December 2019, during (b) (3) (B), (b) (6) absence from the MRB and while she attended EWS, (b) (3) (B), (b) (6) (a supply Marine under (b) (3) (B), in the MRB) took over the task of reducing outstanding TOECRS. During this period, he was able to reduce the outstanding TOECRS from twenty-five (25) to two (2). [Encls (2), (6), (20), (21)]

6. Conduct Regarding (b) (3) (B), (b) (6)

a. On 5 September 2019, (b) (3) (B), submitted (b) (3) (B), (b) (6) 12 June 2019 DC fitness report to the RO (based on (b) (3) (B), (b) (6) BN NJP). According to the PES manual, her submission was 24 days late. [Encls (2), (6), (20), (22), (24), (25)]

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b. HQBN started the process of administratively separating (b) (3) (B), (b) (6) in September/October 2019. [Encls (2), (5), (6), (13), (22)]

c. In September/October 2019, (b) (3) (B), (b) (6) (HQBN (b) (3) (B), (b) (6)) directed (b) (3) (B), (b) (6) and (b) (3) (B), (b) (6) to complete character reference statements for (b) (3) (B), (b) (6) for his pending administrative separation package. [Encls (2), (6), (22)]

d. (b) (3) (B), (b) (6) did not submit the character reference statement within the time directed. [Encls (2), (6), (22)]

e. (b) (3) (B), (b) (6) told (b) (3) (B), (b) (6) he was going to write the character reference if (b) (3) (B), (b) (6) was not able to complete it. Eventually, (b) (3) (B), (b) (6) was able to get (b) (3) (B), (b) (6) to complete the character statement for (b) (3) (B), (b) (6). [Encls (2), (6), (22)]

f. (b) (3) (B), (b) (6) recommended (b) (3) (B), (b) (6) for promotion on his fitness report after he received a DUI and BN NJP (b) (3) (B), (b) (6) 12 September 2019 DC report). [Encls (2), (4), (5), (6), (20), (23), (24), (25)]

g. (b) (3) (B), (b) (6) stated he did not concur with (b) (3) (B), (b) (6) assessment on recommending (b) (3) (B), (b) (6) for promotion but did not order her to change her comments or markings. (b) (3) (B), (b) (6) did not concur with this on the fitness report. [Encls (2), (4), (5), (6), (20), (23), (24), (25)]

h. (b) (3) (B), (b) (6) questioned (b) (3) (B), (b) (6) on her thought process for her markings on the recommendation for promotion. [Encls (2), (6), (20), (23), (25)]

i. (b) (3) (B), (b) (6) thought her fitness report dated 27 October 2019 was in part, reprisal for not concurring with (b) (3) (B), (b) (6) promotion recommendation for (b) (3) (B), (b) (6). [Encls (2), (4), (5)]

7. 27 October 2019 Fitness Report and Counselings

a. On 27 October 2019, (b) (3) (B), (b) (6) submitted (b) (3) (B), (b) (6) fitness report, ranking her as his 80. Her RS value was 2.36. (b) (3) (B), (b) (6) marked her as a three, which constituted the bottom of his RO profile. [Encls (2), (4), (5), (6), (20), (26), (27)]

b. (b) (3) (B), (b) (6) ranked (b) (3) (B), (b) (6) “courage” as a “B” because she had missed several HQBN officer PT events and G4 hikes. In particular, (b) (3) (B), (b) (6) missed the October 2019 HQBN officer PT because she had failed to secure daycare for her child that morning and did not look into securing daycare until approximately two days before the PT session. (b) (3) (B), (b) (6) found this particularly frustrating because the HQBN (b) (3) (B), (b) (6) informed (b) (3) (B), (b) (6) that HQBN officer PT was important; to ensure his officers attended, (b) (3) (B), (b) (6) sent HQBN officer PT calendar invites to his officers dating 19 July 2019 to 19 June 2020. [Encls (2), (4), (5), (6), (15)]

c. (b) (3) (B), (b) (6) attempted to conduct (b) (3) (B), (b) (6) fitness report counseling while (b) (3) (B), (b) (6) attended EWS; however, she was generally not available to conduct the counseling. [Encls (2), (6), (28)]

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d. On 16 December 2019, following (b) (3) (B), (b) (6) return from EWS, (b) (3) (B), (b) (6) counseled (b) (3) (B), (b) (6). (b) (3) (B), (b) (6) intent was to try to “clean the slate” for the rest of their time together. During this counseling, (b) (3) (B), (b) (6) asked (b) (3) (B), (b) (6) how she would prefer to receive tasks from (b) (3) (B), (b) (6) because he felt that she often failed to take action following his tasking and he wanted to improve the process. (b) (3) (B), (b) (6) also directed (b) (3) (B), (b) (6) that, following his tasking, she would no longer wait until the due date or when he followed up with her to inform him that she could not complete a task. [Encls (2), (4), (5), (6), (8), (30)]

e. (b) (3) (B), (b) (6) asserted that, during her counseling on 16 December 2019, (b) (3) (B), (b) (6) “could not provide evidence to justify (her) markings.” (b) (3) (B), (b) (6) witnessed (b) (3) (B), (b) (6) counseling with (b) (3) (B), (b) (6) on 16 December 2019. He described (b) (3) (B), (b) (6) as “unprepared” and “emotionally on edge.” He elaborated that she “turned off” whenever (b) (3) (B), (b) (6) said anything and appeared very frustrated. In contrast, (b) (3) (B), (b) (6) described (b) (3) (B), (b) (6) as being “very factual,” having notes (which he provided to (b) (3) (B), (b) (6)), and providing specific examples for every issue that he raised. [Encls (2), (6), (8)]

f. The 16 December 2019 counseling covered physical courage where (b) (3) (B), (b) (6) had issues attending PT events and this gave an additional reminder for planning purposes for the third Friday of the month. [Encls (2), (6), (29)]

g. The 16 December 2019 counseling covered the timely submission of fitness reports and other Marine Corps administrative functions like FY/CY annual training. [Encls (2), (6), (29)]

h. The 16 December 2019 counseling also discussed CSP requests and how they should be triaged and processed in a timely manner with verbal back brief when CSP requests are received but not completed. [Encls (2), (6), (29)]

i. (b) (3) (B), (b) (6) stated (b) (3) (B), (b) (6) was consistently late with her administrative duties (fitness reports and character reference) and this leads to the comments from (b) (3) (B), (b) (6) to (b) (3) (B), (b) (6) 16 December 2019 written counseling. [Encls (2), (6), (20), (22), (24), (25), (29)]

j. At the conclusion of this counseling, (b) (3) (B), (b) (6) refused to sign her counseling form because she did not agree with it. [Encls (2), (5), (6), (29)]

k. On 16 December 2019, (b) (3) (B), (b) (6) contacted MMRP because she believed that (b) (3) (B), (b) (6) inappropriately included adverse comments in her 27 October 2019 fitness report. MMRP confirmed that “[c]ompletes most assigned tasks with supervision” constituted adverse verbiage. [Encls (2), (4), (5), (6)]

l. On 19 December 2019, (b) (3) (B), (b) (6) met with (b) (3) (B), (b) (6) about her fitness report and MMRP’s finding. Shortly thereafter, (b) (3) (B), (b) (6) directed (b) (3) (B), (b) (6) to correct his comments in (b) (3) (B), (b) (6) fitness report. [Encls (2), (4), (5), (6)]

m. On 3 January 2020, (b) (3) (B), (b) (6) submitted an incorrect and late CSP request to III MEF, which caused the (b) (3) (B), (b) (6) to call and complain to (b) (3) (B), (b) (6). (b) (3) (B), (b) (6) had to resolve the erroneous request with III MEF. [Encls (2), (4), (5), (6), (30)]

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n. On 14 January 2020, (b) (3) (B), changed his comment in (b) (3) (B), (b) (3) (B) fitness report to “[h]as all the tools necessary to be a successful Marine Officer.” [Encls (2), (4), (5), (6)]

o. On 21 January 2020, (b) (3) (B), gave (b) (3) (B), a written counseling for submitting a late CSP request and not adhering to his previous written guidance from 16 December 2019. (b) (3) (B) never notified (b) (3) (B), about the late CSP requests on 3 January 2020. [Encls (2), (4), (5), (6), (30)]

p. The 21 January 2020 counseling also discussed that (b) (3) (B), will sign for CSP requests due to the 3 January 2020 erroneous CSP submission. (b) (3) (B), required notification if (b) (3) (B) is going to sign a CSP request if (b) (3) (B), is not present. [Encls (2), (6), (30)]

q. (b) (3) (B), asserted that (b) (3) (B), provided his 21 January 2020 written counseling in retaliation for (b) (3) (B), informing MMRP about his inappropriate comment in her fitness report. (b) (3) (B), stated that his 21 January 2020 written counseling was not done in retaliation for her communications with MMRP. [Encls (2), (6), (30)]

8. 31 May 2020 Fitness Report and Counselings

a. On 31 May 2020, (b) (3) (B), submitted (b) (3) (B), (b) (3) (B) annual fitness report, ranking her as his 80. Her RS value was 2.86. (b) (3) (B) marked her as a four, which constituted the middle of his profile. Her previous report was a 2.36. [Encls (2), (4), (5), (6), (26), (27), (31)]

b. Upon review, (b) (3) (B), identified adverse comments in her 31 May 2020 fitness report. Specifically, (b) (3) (B), used “basic” once and “routine” twice. (b) (3) (B), notified (b) (3) (B) shortly thereafter. [Encls (2), (4), (5), (6)]

c. (b) (3) (B) directed (b) (3) (B), to adjust his fitness report language. (b) (3) (B), then deleted the words “basic” and “routine.” [Encls (2), (4), (5), (6), (20)]

d. (b) (3) (B), explained that he used “basic” and “routine” because he felt that her performance was average/below average. He explained that he changed the language, following (b) (3) (B), direction, “to make it copasetic,” despite his belief that such language matched her performance. [Encls (2), (6)]

9. End of Tour Award Recommendation

a. On 21 May 2020, (b) (3) (B), requested letters of continuity and endorsements from (b) (3) (B) and (b) (3) (B),. On 21 May 2020, (b) (3) (B), (b) (3) (B) signed/returned his letter of continuity for (b) (3) (B), while (b) (3) (B), endorsed this letter of continuity on 29 May 2020. On 22 May 2020, (b) (3) (B), signed/returned his letter of continuity. [Encls (2), (4), (5)]

b. On 4 June 2020, (b) (3) (B), submitted her two letters of continuity to (b) (3) (B),. [Encls (2), (4), (5), (6), (20)]

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c. The beginning of June 2020, (b) (3) (B), presented a Navy and Marine Corps Achievement Medal to (b) (3) (B). (b) (3) (B), explained that (b) (3) (B), “did a lot of new and interesting stuff. He developed the SMAT team concept, which was a huge victory and received rave reviews from (b) (3) (B) for his work.” (b) (3) (B), also “cleaned up the NMK-232, which had over \$2 million worth of missing gear, and he worked it down to less than \$20k in a short amount of time.” [Encls (2), (4), (5), (6), (14)]

d. (b) (3) (B), fitness report from (b) (3) (B), showed him at a 3.62 RS value with (b) (3) (B), RO marking as a 7. This placed (b) (3) (B), at the top of (b) (3) (B), (b) (3) (B), profile and the top of (b) (3) (B), RO profile. [Encls (2), (6), (26), (30)]

e. Despite (b) (3) (B), (b) (3) (B), two letters of continuity, (b) (3) (B), declined to submit (b) (3) (B), for an end of tour award. (b) (3) (B), explained, “an award should be easy to write.” He compared (b) (3) (B), accomplishments – everything he asked (b) (3) (B), to do, he did, and exceeded expectations – against (b) (3) (B), who struggled to accomplish anything. (b) (3) (B), explained that he could not, “in good conscience,” recommend (b) (3) (B), for an award to the G4. (b) (3) (B), explained that his policy was consistent with (b) (3) (B), (b) (3) (B), (HQB (b) (3) (B),) guidance on awards. [Encls (2), (6), (20), (33)]

f. In early June 2020, (b) (3) (B), asked (b) (3) (B), to set up a meeting with (b) (3) (B), regarding (b) (3) (B), failure to submit an end of tour award for (b) (3) (B), (b) (3) (B), felt that she was not being recognized for her hard work and dedication over the past three years. [Encls (2), (4), (5), (6)]

g. Following this meeting, (b) (3) (B), discussed whether (b) (3) (B), deserved an end of tour award with (b) (3) (B). (b) (3) (B), agreed with (b) (3) (B), that, based on her performance over the past year, she did not rate an award. (b) (3) (B), did not submit (b) (3) (B), for an award. [Encls (2), (4), (5), (6)]

h. On 5 June 2020, (b) (3) (B), with (b) (3) (B), and (b) (3) (B), as witnesses, explained to (b) (3) (B), that her performance was mediocre at best and that her work level was that of a Staff Non-Commissioned Officer (SNCO) or a Staff Sergeant. (b) (3) (B), and (b) (3) (B), stated this provided clarity to (b) (3) (B), on why she was not being recommended for an end of tour award. [Encls (2), (4), (5), (6), (7), (8)]

i. In her complaint and during our interview, (b) (3) (B), asserted that (b) (3) (B), did not submit her for an end of tour award because she informed the G4 about (b) (3) (B), inappropriate comments in her fitness report and because of her gender. (b) (3) (B), compared her work to (b) (3) (B), work, explaining that she had served in the MRB for three years (compared to (b) (3) (B), who received an award after serving in the MRB for only one year) and that she “put in more hours and work than (b) (3) (B), has ever done.” [Encls (2), (4), (5)]

10. (b) (3) (B), (b) (3) (B), MBS and (b) (3) (B), RS Profile

a. During my interview with (b) (3) (B), she provided me with a copy of her master brief sheet (MBS). [Encls (2), (5), (27)]

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- b. (b) (3) (B), received an 80% fitness report from (b) (3) (B), (b) (6) for her 31 May 2019 annual fitness report. Her RO marked her as a five (5), which was the middle of the RO's profile. [Encls (27)]
- c. (b) (3) (B), received a 92% fitness report from (b) (3) (B), (b) (6) for her 23 May 2018. Her RO marked her as a four (4), which was the bottom of the RO's profile. [Encls (27)]
- d. (b) (3) (B), received an 80% fitness report on her fitness report dated 20 June 2017 and 31 May 2017. She received RO markings of six (6), which were bottom of the RO's profile. [Encls (27)]
- e. In total, in five out of (b) (3) (B), (b) (6) six (b) (3) (B), (b) (6) fitness reports she received an 80% fitness report. In four out of her six reports, she was at the bottom of the RO's profile. [Encls (27)]
- f. Following my interview with (b) (3) (B), (b) (6), he provided me with a copy of his RS profile along with some analysis covering his female markings compared to males in his RS profile. [Encls (2), (6), (26), (31)]
- g. In (b) (3) (B), RS profile, females hold the number one spot in three different grades: (b) (3) (B), (b) (6), and (b) (3) (B), (b) (6). (b) (3) (B), (b) (6) had female Marines in a total of four grades (i.e. for 75% of the grades that had a female, he had a female as the highest ranking report). [Encls (2), (6), (26), (31)]
- h. (b) (3) (B), profile shows that, out of his thirteen (13) female reports, eleven (11), (b) (3) (B), (1), (b) (3) (B), (3), (b) (3) (B), (1), (b) (3) (B), (5) were above average, one (1) was average (b) (3) (B), (2), and two (2) were below average, (b) (3) (B), (2). [Encls (2), (6), (26), (31)]
- i. (b) (3) (B), submitted (b) (3) (B), (b) (6) fitness report as a male (b) (3) (B), (b) (6) EN report that did not count against his profile showing an RS value of 2.07. This showed a male (b) (3) (B), (b) (6) ranked lower than any of (b) (3) (B), (b) (6) most recent reports. [Encls (2), (6), (26), (35)]
- j. (b) (3) (B), stated he was a (b) (3) (B), (b) (6) with more than 450 Marines and Sailors. He had between 110-120 females in his command and never had any gender discrimination issues during that time. [Encls (2), (6), (37)]

11. Gender Discrimination

- a. (b) (3) (B), was not aware of any gender-related issues with (b) (3) (B), (b) (6). (b) (3) (B), (b) (6) denied treating (b) (3) (B), (b) (6) differently because of her gender. [Encls (2), (6)]
- b. The entire MRB staff that I interviewed (except (b) (3) (B), (b) (6)) all stated that they did not think (b) (3) (B), (b) (6) discriminated against (b) (3) (B), (b) (6) based on her gender. [Encls (2), (6), (7), (8), (9), (10), (11), (12), (13), (14)]
- c. (b) (3) (B), (b) (6) stated that (b) (3) (B), (b) (6) was always back and forth on all the tasking she received. She was coming up with recommendations but they were not received or not always

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listened to. (b) (3) (B), (b) (6) rebutted everything she was tasked with and she would then feel the repercussions of not doing as she was tasked (counselings). [Encls (2), (9)]

d. (b) (3) (B), (b) (6) stated that (b) (3) (B), (b) (6) did not respect the authority of (b) (3) (B), (b) (6). She would exaggerate and over inflate how she communicated with everyone. She did not know how to pull back from the conversations with (b) (3) (B), (b) (6) when they disagreed. Her leadership style was more intimidating and usually profanity laden. Her counseling or discussion would end where the individual may feel like an idiot. She was always trying to prove people wrong and had an arrogant way of communicating her points. [Encls (2), (11)]

e. (b) (3) (B), (b) (6) stated that (b) (3) (B), (b) (6) consistently provided professional push back however was probably seen as uncooperative. (b) (3) (B), (b) (6) explained that (b) (3) (B), (b) (6) “appears to work about twice as much time” but that she does not work on what is important to the boss. In addition, (b) (3) (B), (b) (6) indicated that he is able to “work smarter, not harder” compared to (b) (3) (B), (b) (6). [Encls (2), (14)]

f. (b) (3) (B), (b) (6) stated (b) (3) (B), (b) (6) was a Marine that received tasks, understood them, executed them, and was ready for additional tasking’s. [Encls (2), (8)]

g. (b) (3) (B), (b) (6) stated (b) (3) (B), (b) (6) is tasked and then would execute with little additional guidance required. [Encls (2), (9)]

Opinions

1. (b) (3) (B), (b) (5), (b) (6) [REDACTED].

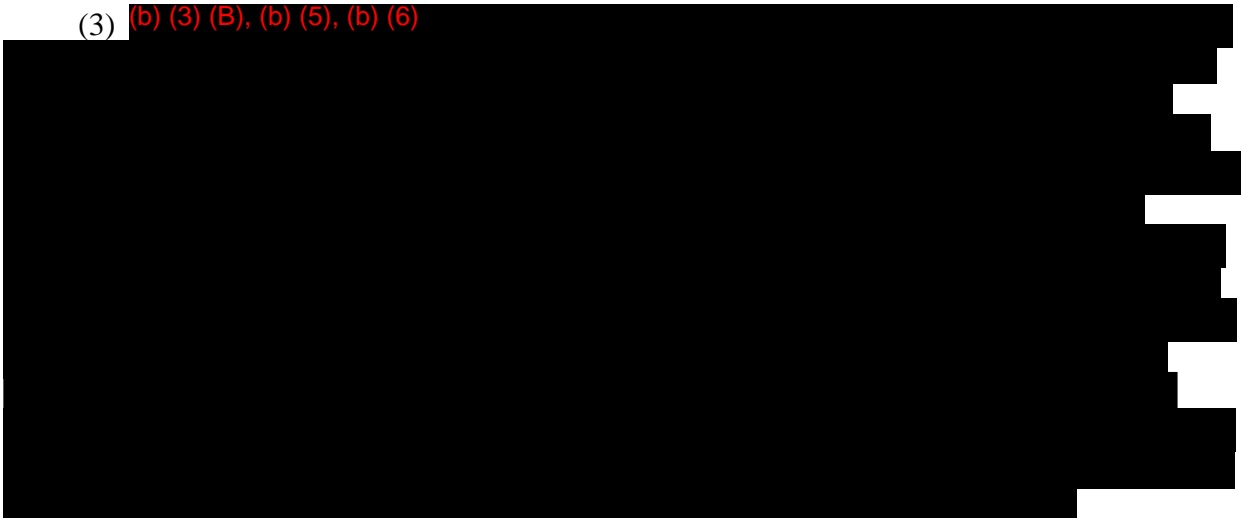
a. (b) (3) (B), (b) (5), (b) (6) [REDACTED].

(1) (b) (3) (B), (b) (5), (b) (6) [REDACTED].


(2) (b) (3) (B), (b) (5), (b) (6) [REDACTED].

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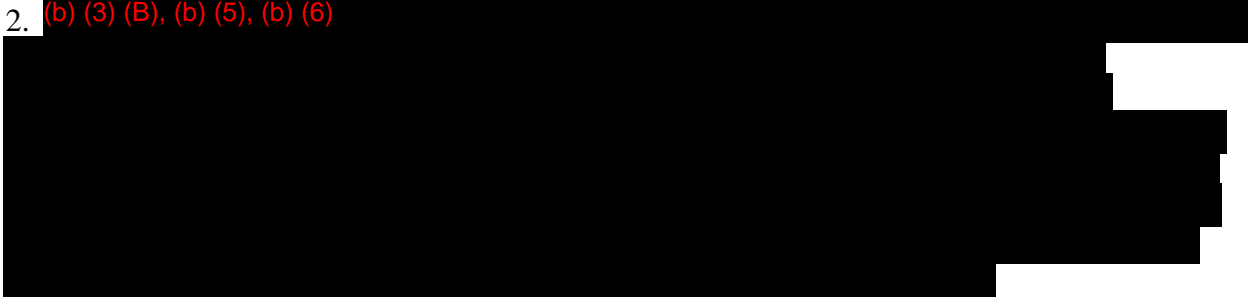
(3) (b) (3) (B), (b) (5), (b) (6)

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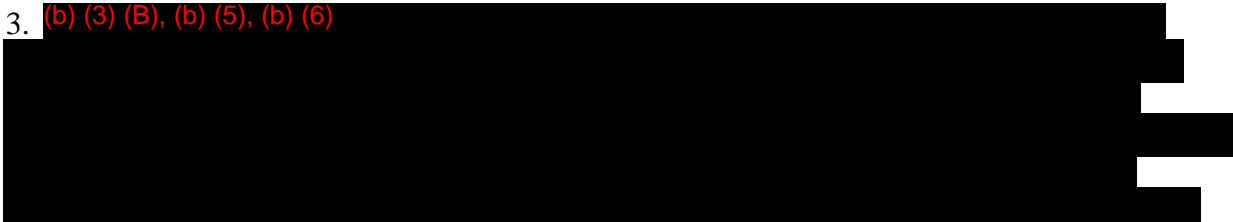
b. (b) (3) (B), (b) (5), (b) (6)

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2. (b) (3) (B), (b) (5), (b) (6)

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3. (b) (3) (B), (b) (5), (b) (6)

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(b) (3) (B), (b) (5), (b) (6)

Recommendation

1. (b) (3) (B), (b) (5), (b) (6)

2. The point of contact for this matter is (b) (3) (B), (b) (6)

(b) (3) (B), (b) (6)